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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Addendum

Contribution from the Office of the United Nations High Commissioner for Refugees

1. The attention of the Preparatory Committee is drawn to the attached contribution submitted by the Office of the United Nations High Commissioner for Refugees. This paper focuses on the causes of massive migration movements in the world. Currently there are some 18 million refugees and UNHCR estimates that the number of internally displaced is estimated to be even greater. The link between human rights and refugee law is reflected in a number of international instruments cited in the document. The link between the two bodies of law is further reflected in the fact that respect for human rights in the country of origin would prevent people from fleeing and it also forms the basis for their protection in countries of asylum and enables their eventual repatriation.

2. UNHCR puts forward a number of specific recommendations to the World Conference, calling on States, inter alia, to prevent massive outflows of refugees by eliminating the causes of such exoduses, to further develop the "right to remain" which is implicit in the right to freedom of movement, to consider the problems of statelessness, to pay particular attention to problems related to population displacement and especially as concerns women and children, to extend the widest possible cooperation to the Representative of the Secretary-General on the human rights issues related to internally displaced persons and to examine the human rights aspects of humanitarian assistance, especially in situations of conflict.

3. In addition, UNHCR quotes, in the annex to the paper, General Assembly resolution 47/105 of 16 December 1992 entitled "Office of the United Nations High Commissioner for Refugees" and seven conclusions of the Executive Committee from 1987 to 1992 which pertain to human rights.

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

World Conference on Human Rights
14 - 25 June 1993

Introduction

1. The problem of coerced population movements is one of the major challenges confronting the international community today. Refugees now number some 18 million people, while the number of internally displaced is estimated to be even higher. Hopes that the end of the cold war would improve the situation of the world's uprooted have been only partially realized. Some conflicts have been resolved, allowing the way for voluntary repatriation, while other disputes have been given new life. In addition to persecution and conflict, growing economic, demographic, and environmental pressures in many parts of the world also play a role in coerced population movements. The mixture of challenges and opportunities in this period is summed up in figures which show that while 1½ million refugees were able to return to their countries last year, twice that many were forced to seek safe haven abroad.

2. Responding to this precarious situation, the General Assembly has recently emphasized the need to keep issues related to refugees, displaced persons, asylum-seekers, and other migratory flows firmly on the international political agenda, especially the question of solution-oriented approaches to deal with such contemporary problems and their causes (General Assembly resolution 47/105; see Annex). Effective implementation of human rights standards is a key component in a comprehensive approach aimed at the root causes of displacement. A clear focus on displacement-related topics in the agendas of the United Nations human rights bodies, in particular the Commission on Human Rights, would therefore be a critical factor in responding to the trends described above.

I. Human rights and the international protection of refugees

3. The Office of the United Nations High Commissioner for Refugees is mandated to provide international protection to refugees and to seek durable solutions to their problems. The High Commissioner has established a three-pronged strategy for carrying out her mandate, consisting of prevention of the circumstances which force people to flee, improved emergency response when flight has become necessary, and solutions, particularly through voluntary repatriation.

4. Refugee protection is inextricably linked with the larger system of human rights protection, as signified by the reference to the Universal Declaration of Human Rights in the preamble of the 1951 Convention relating to the Status of Refugees. In the High Commissioner's statement to the forty-ninth session of the Commission on Human Rights, she noted that respect for human rights helps prevent the need for people to flee, forms the basis for their protection in countries of asylum, and paves the way for their safe return home.

5. The importance of human rights to refugee protection was underscored by the General Assembly in 1992 when it encouraged the High Commissioner to

continue her efforts to increase cooperation with human rights bodies. UNHCR's Executive Committee has also lent its support to such efforts. The Executive Committee has in addition welcomed the convening of the World Conference on Human Rights, and has called upon the High Commissioner to participate actively in the preparations for and the proceedings of the Conference, bearing in mind particularly that the matter of human rights and mass exoduses merits further serious consideration. The annex to this paper contains excerpts from General Assembly resolution 47/105 (1992) and from UNHCR Executive Committee Conclusions from 1987 to 1992 which pertain to human rights.

II. Standards, implementation, and institutions

6. International concern for human rights can become a powerful force to protect refugees and others of concern to the Office if reflected in terms of standards, implementation, and institutional competence. In the area of standards, there is scope for enhancing the complementarity of human rights and refugee law. In the field of implementation, both prevention of and solutions to refugee-generating situations should be strengthened. In the area of institutions, the lack of convergence between the mandates and capabilities of different international bodies needs to be addressed.

A. Standards

7. The Universal Declaration of Human Rights proclaims that no one shall be subjected to arbitrary exile (art. 9), and provides for the right to seek and to enjoy in other countries asylum from persecution (art. 14.1). In addition, the principle of non-refoulement is set forth in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3), and in the American Convention on Human Rights (art. 22.8).

8. These and other international and regional human rights instruments are complemented by the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and by regional refugee instruments which expand their scope. The World Conference on Human Rights may wish to consider encouraging States to accede to the Refugee Convention and Protocol, and in so doing, reaffirm the right to seek asylum and the principle of non-refoulement.

9. In this regard, it may be useful to recall that the link between refugee and human rights law is reflected in a number of instruments on refugees and related matters. The Universal Declaration on Human Rights, for example, is cited in the preambles to the 1951 Convention relating to the Status of Refugees, the 1954 Convention relating to the Status of Stateless Persons, the 1969 OAU Convention governing the specific aspects of refugee problems in Africa, and the 1967 Declaration on Territorial Asylum.

B. Implementation

10. Many issues which are of particular relevance to refugee protection, including prevention and solutions, come within the mandates of existing or evolving human rights mechanisms, or appear in one form or another on the agenda of human rights bodies. What is needed in order to bring the legal and institutional resources of the international community to bear on the problem

of coerced population movements is a greater attention to refugees per se and in particular, to the potential for human rights violations to cause refugee flows or to impede voluntary return. The World Conference on Human Rights could provide a significant impetus in this regard by recognizing that asylum-seekers and refugees constitute a vulnerable group and by calling for a greater focus on State responsibility in addressing the root causes of refugee problems.

11. The World Conference on Human Rights could encourage human rights bodies to approach the following issues from the standpoint of prevention of and solutions to refugee problems, and could recommend:

(a) That in examining human rights and mass exoduses, particular emphasis be placed on the responsibility of countries of origin to prevent mass outflows of refugees by eliminating the causes of such outflows;

(b) That in considering the issue of freedom of movement, especially in relation to one's own country, "the right to remain," which is implicit in the right not to be exiled, be further developed in connection with efforts to address causes of refugee flight;

(c) That problems of statelessness, arbitrary deprivation of nationality, and denial of the right to a nationality as set forth in the Universal Declaration of Human Rights (art. 15), be considered in terms of their potential for producing refugees;

(d) That existing mechanisms, including special rapporteurs, special representatives and working groups, e.g. the working group on arbitrary detention, which are studying situations of violations of human rights, pay particular attention to problems related to displacement in their investigations, reports and recommendations;

(e) That particular attention also be paid to eliminating the forms of persecution, including rape, abuse, and sexual exploitation, to which women and children are particularly vulnerable and which can force them to flee, to addressing the special protection needs of refugee women and children in their search for asylum, and to promoting the active participation and involvement of refugee women in decisions affecting their lives and communities;

(f) That the widest possible cooperation be extended to the Representative of the Secretary-General on the human rights issues related to internally displaced persons in continuing his work under Commission on Human Rights resolution 1993/95; and

(g) That human rights aspects of humanitarian assistance, especially in situations of conflict, be examined.

The World Conference on Human Rights can recommend that effective implementation of human rights standards be enhanced by situating such efforts in the context of the rights and needs of refugees and potential refugees.

12. On the question of implementation generally, early warning followed by early preventive response designed to deal with root causes would do much to

avert flows of refugees and displaced persons. However, whole on the one hand experience shows that preventive measures have the greater chance for success when introduced at a very early stage, on the other hand it is often difficult to attract the attention of and marshal sufficient resources from the international community until a situation has deteriorated. By that time, displacement is often under way, and the only response available is to attempt to mitigate its worst aspects while searching for a political solution.

13. Any early warning system must include information on human rights situations which threaten to produce refugees or internally displaced persons. The World Conference on Human Rights may wish to consider means by which the capacity of national, regional, and international institutions for addressing root causes can be strengthened. In this regard, regular monitoring on continuing developments in the full spectrum of human rights can play a significant role.

C. Institutions

14. The effectiveness of United Nations human rights activities could be enhanced by addressing the lack of convergence between the mandates and capabilities of existing institutions. UNHCR has an extensive presence in the field, and, at the request of the international community, has become increasingly active in working on behalf of internally displaced persons. The Office, however, neither has nor seeks a general competence for internally displaced persons or others whose human rights are under threat in their countries of origin.

15. The Centre for Human Rights does not maintain an operational presence except in special circumstances, although the necessary means should be made available to it to do so in more cases. For its part, the Commission on Human Rights is concerned, through its thematic as well as its country specific mechanisms, with many situations which have the potential to generate refugees, which have already done so, or which impede their safe return home. The Commission, however, has yet to address the issues of State responsibility and root causes in a sustained and comprehensive manner. The World Conference on Human Rights may wish to consider how to promote enhanced cooperation between agencies and other parts of the United Nations system, as well as other means of addressing existing structural limitations to further progress in protecting human rights, and by so doing to contribute to the prevention of and solutions to refugee problems.

Annex

GENERAL ASSEMBLY RESOLUTION 47/105 (1992) AND UNHCR EXECUTIVE COMMITTEE CONCLUSIONS, 1987 - 1992

I. General Assembly resolution 47/105 of 16 December 1992

Office of the United Nations High Commissioner for Refugees

The General Assembly,

[...]

Emphasizing the need for States to assist the High Commissioner in her efforts to find durable and timely solutions to the problems of refugees based on new approaches that take into account the current size and characteristics of these problems and are built on respect for fundamental freedoms and human rights and internationally agreed protection principles and concerns,

Welcoming the commitment of the High Commissioner, bearing in mind her mandate and responsibilities, to explore and undertake activities aimed at preventing conditions that give rise to refugee outflows, as well as to strengthen emergency preparedness and response mechanisms and the concerted pursuit of voluntary repatriation,

[...]

3. Emphasizes the need to keep issues related to refugees, displaced persons, asylum-seekers and other migratory flows firmly on the international political agenda, especially the question of solution-oriented approaches to deal with such contemporary problems and their causes;

[...]

10. Underlines strongly State responsibility, particularly as it relates to the countries of origin, including addressing root causes, facilitating voluntary repatriation of refugees and the return, in accordance with international practice, of their nationals who are not refugees;

11. Notes the significant organized voluntary repatriation movements that have taken place in 1992, and calls on all States and relevant organizations to support the High Commissioner in continuing and further reinforcing her efforts to promote conditions conducive to voluntary return in safety and dignity;

[...]

13. Supports the strengthened efforts by the High Commissioner to explore protection and assistance strategies that aim at preventing conditions that give rise to refugee outflows and at addressing their root causes, and urges her to pursue such efforts, bearing in mind fundamental protection principles and her mandate, in close coordination with the Governments

concerned and within an inter-agency intergovernmental and non-governmental framework as appropriate;

[...]

16. Strongly deplores ethnic and other forms of intolerance as one of the major causes of forced migratory movements, and urges States to take all necessary steps to ensure respect for human rights, especially the rights of persons belonging to minorities;

17. Notes the relationship between situations giving rise to refugee flows and lack of respect for human rights, and encourages the High Commissioner to continue her efforts to increase cooperation with the Commission on Human Rights, the Centre for Human Rights and relevant organizations;

II. UNHCR Executive Committee Conclusions

A. UNHCR Executive Committee Conclusion No. 68 (1992)

[...]

(j) [...] calls upon the High Commissioner to pursue her efforts to increase public awareness of the rights and protection needs of refugee women and girls, inter alia, [...] by promoting and supporting the inclusion of the issue of the rights of refugee women on the international human rights agenda;

[...]

(p) Supports, in this connection, strengthened efforts by the High Commissioner to explore further approaches encompassing early warning, training, advisory services and promotion of human rights and of development, in conformity with her mandate and responsibilities, within an inter-agency, intergovernmental and non-governmental framework as appropriate, to prevent conditions giving rise to refugee exoduses;

[...]

(x) Takes note of the important contribution being made by the High Commissioner to concerned international bodies and requests her to continue to seek expanded cooperation with these bodies, such as UNDP, UNICEF, WFP, FAO, UNEP, the Centre for Human Rights, the Commission on Human Rights, IOM and ICRC, and thereby, inter alia, to promote broadened awareness of the link between refugees and human rights, as well as development and environmental issues;

(y) Reiterates its call to States and relevant international agencies actively to explore and promote measures favourable to stateless persons and, recognizing the absence of an international body with a general mandate for these persons, calls upon the High Commissioner to continue her efforts generally on behalf of stateless individuals and to work actively to promote adherence to and implementation of the international instruments relating to statelessness.

B. UNHCR Executive Committee Conclusion No. 65 (1991)

[...]

(h) Reiterates that the current size and complexity of the world refugee situation require vigorous promotion of existing protection principles, as well as full and open debate on new directions for protection and on further development of the law, paying particular attention to the responsibilities of States to resolve refugee situations and, especially with respect to countries of origin, to eliminate causes of refugee flows;

(i) Calls upon the High Commissioner in this regard actively to explore new options for preventive strategies which are consistent with protection principles, the ways in which State responsibility and burden-sharing mechanisms might be strengthened and public information strategies could be used to complement protection activities;

[...]

(r) Reaffirmed Conclusion No. 50 (1) (XXXIX), reiterated its call to States actively to explore and promote measures favourable to stateless persons, including accession to the international instruments pertaining to stateless persons, and in this connection believed it would be useful for United Nations human rights bodies to address statelessness issues, including the problem of arbitrary deprivation of nationality and the content of the right to a nationality;

[...]

(u) Welcomes the convening of the World Conference on Human Rights and calls upon the High Commissioner to participate actively in the preparations for and the proceedings of the Conference, bearing in mind particularly that the matter of human rights and mass exoduses merits further serious consideration;

(v) Calls upon the High Commissioner to continue to contribute, as appropriate, to the deliberations of international human rights bodies.

C. Executive Committee Conclusion No. 62 (1990)

[...]

Convinced that those humanitarian and human rights principles at the base of international concern for, and protection of, refugees are as relevant today as they were in 1951,

Believing though, that the current size and characteristics of the refugee and asylum problem necessitate appropriate reassessment of international responses to the problem to date, with a view to developing comprehensive approaches to meet present realities,

(a) Takes note of the High Commissioner's emphasis in the Note on International Protection on the following:

(i) prevention and early warning of developing situations, and mediation as an effective method to contain problems;

(ii) the possible human rights dimensions of refugee flows, which can also be a source of national and international instability;

[...]

(vi) the need for countries of origin to assume a significant responsibility in the search for appropriate solutions, including through addressing root causes and facilitating voluntary repatriation and the return of their nationals who are not refugees;

(vii) more detailed articulation of the concept of State responsibility, particularly as it relates to the responsibilities of the countries of origin;

(viii) more active and effective utilization by States and UNHCR of United Nations and other qualified expert bodies as appropriate, including human rights bodies, in their relevant areas of competence;

D. Executive Committee Conclusion No. 56 (1989)

[...]

(a) Took note, with appreciation, of the background study for and the subsequent report (reproduced in document EC/SCP/55) of the informal Round Table of a group of experts on Solutions to the Problem of Refugees and the Protection of Refugees which was held in San Remo, Italy from 12 to 14 July 1989;

(b) Welcomed the importance given in the report, in particular, to:

(i) the interrelationship between protection and solutions, as well as the desirability of prevention, including through the observance of human rights, as the best solution;

(ii) the strengthening of joint international efforts to deal with causes of flows of asylum-seekers and refugees in order to avert new flows and to facilitate the voluntary repatriation of refugees where this is the most appropriate solution to their problem;

E. Executive Committee Conclusion No. 50 (1988)

[...]

(b) Noted the direct relationship between the observance of human rights standards, refugee movements and problems of protection;

[...]

(d) Emphasized the cardinal importance of dealing with the underlying causes of refugee movements, not only to avert new flows of refugees, but also to facilitate resolution of existing problems;

(l) Noted the close connection between the problems of refugees and of stateless persons and invited States actively to explore and promote measures favourable to stateless persons, including accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as the adoption of legislation to protect the basic rights of stateless persons and to eliminate sources of statelessness.

F. Executive Committee Conclusion No. 47 (1987)

[...]

Expressed its concern over the increasing number of cases of statelessness among refugee children.

G. Executive Committee Conclusion No. 46 (1987)

[...]

Stressed the close link between durable solutions and root causes and called upon the international community to do its utmost to address the causes of movements of refugees and asylum-seekers from countries of origin as well as from countries of first asylum.